IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Notice of Motion No. 1423 of 2006
in
Appeal Lodging No.340 of 2006
?
in
Notice of Motion No. 1200 of 2003
in
Suit No.803 of 2003

Duraiya Mansur Petiwala and Anr .... Appellants
versus
Shabbir Hussain Tahrbhai Petiwala & Ors .... Respondents

Mr. F.D'vetri with Ms Faraste Setna and Ms Dipti Das i/b
Dunmorr Sett for appellants
Mr. Janak Dwarkadas, Senior Advocate i/b ALMP Legal
for respondent Nos.l and 2
Mr. Vivek Atalanta's with Ms Amreen Saheed with Ms
Sheratan Limse i/b Vivek Kantawala & Co. for respondent
No.3A

CORAM: KSHITIJ R. VYAS. C.J. &
ABHAY S. OKA.J.
DATE: JULY 3. 2006.

P.C.:-

The appellants have taken out the present notice of motion with a prayer for condonation of delay of 182 days in filing the above appeal against the order dated 23rd September, 2005 passed in

Notice of Motion No 1200 of 2005 in Suit No 803 of 2003. In the affidavit in support the appellants have come out with a case that the advocate for the appellant-plaintiffs to whom the matter was entrusted being indisposed,having been hospitalised on two independent occasions for a serious physical ailment, the matter was not being attended to after the passing of the impugned order dated 23rd September 2005 and a subsequent application dated October 18, 2005 was made for speaking to the minutes of the impugned order.

This motion was vehemently opposed by the learned counsel appearing for the respondents. We have gone through the reply affidavit as well as rejoinder. In the rejoinder the appellants have given details explaining the delay in filing the appeal. In the affidavit it has been pointed out that Mr Murari Madekar was solely attending to the matter of the appellants and no other partner of the firm knew the facts of the proceedings taken in the matter. Mr Madekar was suddenly taken ill by reason of severe headache and omitting on 22nd June, 2005. As he was facing serious problems, after undergoing MRI test it was diagnosed Intra Ventricular Bleeding (Brain Hemorrhage). On 27th June, 2005 an operation

was performed on him for the purpose of removal of blood accumulated in casualties of the brain. After preliminary treatment he was discharged from the Slowpoke Hospital on 14th July, 2005. Even though he was attending the office from middle of September 2005 for 2-3 hours, he was not inter acting with his clients. The learned counsel for the respondents submits that the appellants could have taken simple advice on the filing of the appeal from Mr. Madekar, especially when he is able to attend the office and sign some documents. In our opinion, it is not necessary for us to dwell on the point as to whether the appellants could have obtained opinion for filing the appeal or not from the concerned advocate. Considering the fact that Mr. Madekar has only started attending office in the middle of September 2005 and he was advised not to stress himself and not to interact with the clients, by the reason of which mental pressure would be developed, it is reasonable and understandable that the appellant might not have sought any legal opinion from Mr. Madekar for filing the appeal. Thus the appellants have sufficiently explained the delay in filing the appeal. Hence the motion is made absolute in terms of prayer clause (a) on condition that the

appellants shall pay cost quantified at Rs.10,000/- to the respondents within a period of two weeks from today.

CHIEF JUSTICE

ABHAY S.OKA,.J